

Sales to the Federal Government are not taxable under the Electricity Excise Tax Law by virtue of the Supremacy Clause of the United States Constitution. See 35 ILCS 640/2-4. (This is a GIL).

August 28, 2000

Dear Xxxxx:

This letter is in response to your letter dated July 12, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

After a recent telephone conversation with PERSON, she suggested I request a 'General Information Legal Letter Ruling' on the above subject. During our conversation she and I both feel the United States Government is exempt from paying State and Local taxes based upon the Supremacy Clause of the United States Constitution. Further, the letter attached to the COMPANY letter deals with 'Charitable, Religious or Educational Non-Profit Organizations (Centers) however, we are not in those categories wherein instead we are Federal Government Agency.

Please appreciate this matter has come to my attention because of the attached legal letter from COMPANY and their reference letter from the Illinois Department of Revenue, Legal Department telling us we are not exempt from paying any State or Municipal taxes on purchases of electricity from COMPANY. (See attached letters)

Therefore, since COMPANY has based their decision on a legal letter ruling that is 28 years old, I and PERSON felt it would be best to not argue with COMPANY but instead have your department notify them that they are wrong.

Thank you for your help and cooperation is clearing up this misunderstanding with COMPANY. Please feel free to contact me if you have any questions, I can be reached at #####.

The Electricity Excise Tax Law imposes a tax upon the privilege of using in this State electricity purchased for use or consumption. 35 ILCS 640/2-4. Subsection (c) of Section 2-4 also provides that, "[t]he tax imposed by this Section 2-4 is not imposed with respect to any use of electricity by business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the time specified by the Department of Commerce and Community Affairs; or with respect to any transaction in interstate commerce, or otherwise, to the

extent to which such transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State." (emphasis added).

Because the incidence of the Electricity Excise Tax is on the consumers, the Department believes that sales to the Federal Government are not taxable under the Electricity Excise Tax Law by virtue of the Supremacy Clause of the United States Constitution. This is supported by the definition of the term "person" (and by reference for the term "purchaser") in Section 2-3 of the Electricity Excise Tax law that fails to reference the Federal Government but does specifically reference "any city, town, village, county, or other political subdivision of this State."

The AGENCY is recognized as an executive department of the United States Government. See 38 U.S.C. Sec. 301(a). Therefore, the AGENCY is not subject to Electricity Excise Tax liability.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.